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NO.

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1983

CHARLES SCHAAF,
Respondent

v.

CHESAPEAKE & OHIO RAILWAY CO.,
Petitioner.

ON PETITION FOR WRIT OF CERTIORARI TO THE MICHIGAN SUPREME COURT AND THE MICHIGAN COURT OF APPEALS

RESPONDENT'S BRIEF IN OPPOSITION

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The Respondent, Charles Schaaf, respectfully requests that this Court deny the petition for writ of certiorari, seeking review of the order of the Michigan Supreme Court and the opinion of the Michigan Court of Appeals in this case.

QUESTION PRESENTED

Does a trial court err in instructing a jury that failure of railroad cars to automatically couple upon impact is not a violation of section 2 of the Safety Appliance Act, 45 U.S.C. §1 *et. seq.*, if the failure to couple is caused by misalignment of the drawbars, even though, under such circumstances, coupling cannot occur without the necessity of men going between the ends of the cars in order to align the drawbars?

STATEMENT OF THE CASE

Respondent accepts Petitioner's Statement of the Case, but makes the following additions in order to provide the Court with a more complete statement of the facts material to the question presented.

Much of the testimony taken at trial in this case concerned the mechanisms and procedures for the proper coupling and uncoupling of railway cars, with particular emphasis on two pieces of equipment found on every car—the drawbar and the knuckle.

The metal drawbar weighs between 300 and 1,000 pounds (T. 157, 290).[1] It is attached to the undercarriage of the railway car and extends through the bottom center of both the front and back of the car. The drawbar is not stationary; it moves from side to side within a narrow channel so the train can negotiate curves (T. 199). Attached to the end of each drawbar is the knuckle (also known as the coupler) by which the actual coupling of cars is perfected.

Normally, the coupling of railway cars is completed by "bumping" a slowly moving car into a stationary car, thus connecting the knuckles. However, before such a coupling can take place, two conditions must be satisfied. At least one of the cars' knuckles must be opened and the drawbars on the two cars must be properly aligned (T. 75, 314).

The knuckle may be opened or closed through the use of an operating lever which is attached to the side of every car (T. 73, 290, 306). Thus, there is no "necessity of men going between the ends of the cars" in order to open the knuckle. The drawbar, however, can only be adjusted by manually pushing or pulling on the bar from the end of the car (T. 200-201, 292).

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[1] References are to the pages of the transcript of the trial in this matter which commenced on March 25, 1980.

That distinction between the manner of operating the coupler and the manner of operating the drawbar, along with the unanimous decisions of courts which have addressed the question presented here, was the basis of the holding of the Michigan Court of Appeals from which Petitioner seeks relief. (See Opinion, Appendix A in Petition for Writ of Certiorari [hereinafter Petition] at 22-23).

REASONS WHY THE WRIT SHOULD BE DENIED

1. There is no conflict of decisions on the issue presented in the petition.

Petitioner seeks grant of a writ of certiorari on the sole ground that the decision in this matter is in conflict with this Court's holding in *Affolder* v. *New York, C. & ST. L. R. Co.*, 339 U.S. 96, 70 S. Ct. 509, 94 L. Ed. 683 (1950), and with the Sixth Circuit's holding in *Cobb* v. *Union R. Co.*, 318 F.2d 33 (6th Cir.), *cert. denied*, 357 U.S. 945, 84 S. Ct. 352, 11 L. Ed. 2d 275 (1963). Respondent submits that there is no conflict between this case and either *Affolder, supra*, or *Cobb, supra*, because the issue presented here was neither raised nor decided in *Affolder, supra*, or *Cobb, supra*. Moreover, the decision in this matter not only is consistent with the reasoning in this Court's prior decisions, including *Affolder, supra*, which have construed the statute at issue here under materially different factual circumstances, but also is in full accord with the decisions of all federal and state courts which have addressed the issue presented here.

Section 2 of the Federal Safety Appliance Act, 45 U.S.C. §2, provides:

> It shall be unlawful for any common carrier engaged in interstate commerce by railroad to haul or permit to be hauled or used on its line any car used in moving interstate traffic not equipped with couplers coupling automatically by impact, and which can be uncoupled without the necessity of men going between the ends of the cars.

It is undisputed that the issue in this case is whether the Michigan appellate courts properly found that the trial court erred in instructing the jury that the failure of the railroad cars to couple automatically on impact does not constitute a violation of section 2 of the Federal Safety Appliance Act if the drawbar on which the coupler is mounted is not aligned for coupling. (*See* Petition at 8-9. *See also* Opinion of the Michigan Court of Appeals in Petition, Appendix A, at 21).

As a preliminary matter, it is important to note that although this Court has not directly addressed the question whether the *Affolder* decision affects the instant case, it has already recognized that the alignment of drawbars is an integral part of the coupling operation subject to the constraints of the Safety Appliance Act. *Atlantic City Railroad* v. *Parker*, 242 U.S. 56, 37 S. Ct. 69, 61 L. Ed. 150 (1916); *San Antonio & Aransas Pass Ry.* v. *Wagner*, 241 U.S. 476, 36 S. Ct. 626, 60 L. Ed. 1110 (1916).

In *Affolder, supra*, plaintiff was injured when he ran after and attempted to board a railroad car which failed to couple on impact and began rolling down the track. The pertinent issue in *Affolder* was whether the court had properly instructed the jury that if the coupler had not been opened prior to the coupling attempt, the failure to couple was not a violation of the Safety Appliance Act. 339 U.S. at 99. This Court's holding that the instruction was proper, *id.*, recognized a defense to the otherwise absolute duty "requiring performance [i.e., coupling] on the occasion in question." *Id.* at 98, citing *O'Donnell* v. *Elgin, Joliet & Eastern R. Co.*, 338 U.S. 384, 70 S. Ct. 200, 94 L. Ed. 187 (1949).

Recognition of that defense, however, is not precedent for recognition of a similar defense with respect to alignment of drawbars because the methods involved in the opening of a coupler and those involved in aligning of a drawbar are different in details material to section 2 of the Safety Appliance Act. Indeed, the Court's rationale underlying recognition of the closed-coupler defense to the

otherwise absolute statutory duty leads inexorably to the conclusion that creation of a defense for misaligned drawbars would directly contravene the statute.

The test of compliance with section 2 of the Safety Appliance Act is whether coupling and uncoupling can be accomplished "without the necessity of men going between the ends of the cars." 45 U.S.C. §2; *Johnson* v. *Southern Pacific Co.*, 191 U.S. 1, 16, 25 S. Ct. 158, 49 L. Ed. 363 (1904). Automatic couplers are designed so that coupler-knuckles can be opened by operating a lever installed for that purpose on the side of every car. Thus, because there is no "necessity of men going between the ends of the cars" in the performance of the coupling operation, the closed-knuckle defense fully conforms to the legislative purpose underlying the Safety Appliance Act.

In contrast to the method of opening a coupler, the alignment of drawbars must be performed manually from a position at the end of a railroad car (T. 201, 291). There is no mechanism provided to adjust the drawbar alignment while standing at the side of the car. *See McGowan* v. *Denver & Rio Grande W. R. Co.*, 121 Utah 587, 244 P. 2d 628, 630 n.2, *cert. denied*, 344 U.S. 918, 73 S. Ct. 346, 97 L. Ed. 707 (1952) (describing coupling mechanisms). *Cf. Donnelly* v. *Pennsylvania R. Co.*, 412 Ill. 115, 105 N.E.2d 730, 731-732, *cert. denied*, 344 U.S. 855 (1952) (buffer springs are intended to return the drawbar to its center position but misaligned drawbars must be centered manually).

Thus, the only question presented on appeal of this matter—whether section 2 of the Safety Appliance Act is violated by the failure of the railroad cars to couple automatically on impact due to misalignment of the drawbars—was not addressed in *Affolder*. Moreover, the rationale for the *Affolder* decision is not transferrable to the question presented here because the facts material to the disposition of the issue in each case differ in crucial respects under both the terms and the purposes of section 2 of the Safety Appliance Act. Therefore, Petitioner's claim

that the decision of the Michigan appellate courts is in conflict with the *Affolder* decision is demonstrably false.

Petitioner's claim that the instant decision is in conflict with the decision of the Sixth Circuit in *Cobb, supra,* is similarly without merit. The issue in *Cobb* was whether there was sufficient evidence from which a jury could infer that the couplers were "properly set" at the time they failed to automatically couple. 318 F.2d at 37.

The *Cobb* court never explicitly explained whether the term "properly set" referred to the knuckle or to the drawbar. However, the *Cobb* court's extensive reliance on *Affolder, supra* at 36-37, demonstrates that the *Cobb* decision was addressed to the question whether the knuckle was open or closed when coupling was attempted.

Thus, Petitioner's attempt to portray the instant decision as conflicting with the *Cobb* holding is equally as unavailing as that attempt with this Court's *Affolder* decision. A conflict simply does not exist because there are crucial distinctions in the methods of opening a knuckle and those of aligning a drawbar vis-a-vis the requirement for section 2 of the Safety Appliance Act that there be no necessity to go between the ends of cars for coupling or uncoupling.

Finally, tellingly absent from the Petition in this matter, yet highly pertinent to the question of a claimed conflict, is acknowledgment of the fact that the decisions of all state and federal courts which have addressed the question presented here are unanimous in concluding that misalignment of drawbars is not a defense to a violation of section 2 of the Safety Appliance Act. *Kansas City Southern Railway* v. *Cagle,* 229 F.2d 12 (8th Cir.), *cert. denied,* 351 U.S. 908 (1956); *Finley* v. *Southern Pacific Co.,* 179 Cal. App. 2d 424, 3 Cal. Rptr. 895 (1960) (dictum); *Donnelly* v. *Pennsylvania R. Co., supra; Hallada* v. *Great Northern Railway,* 244 Minn. 81, 69 N.W.2d 673, *cert. denied,* 350 U.S. 874 (1955), *rev'd in part on other grounds,* ____ Minn. ____, 262 N.W.2d 377 (1977); *McGowan* v. *Denver & Rio Grande W.*

R. Co., supra. See Metcalfe v. *Atchison, Topeka & Sante Fe Railroad*, 491 F.2d 892, 896 (10th Cir. 1974); *Chicago St. P.M. & O. Ry.* v. *Muldowney*, 130 F.2d 971, 975-976 (8th Cir. 1942), *cert. denied*, 317 U.S. 700 (1943). *See also* Opinion of the Michigan Court of Appeals in Petition, Appendix A, at 22.

It is apparent that the alleged conflict presented by the instant decision is, at best, illusory. In order to create an apparent conflict, Petitioner's Argument ignores the cases which are directly on point and portrays the *Affolder* and *Cobb* decisions in only the most general terms, without reference to the facts which not only are crucial to those decisions but also are materially different from the instant controlling facts. *See* Petition at 8. That ineffectual effort to assert a nonexistent conflict demonstrates that no reason exists for the grant of certiorari.

2. Petitioner's argument is without merit because Petitioner's proposed construction of section 2 of the Federal Safety Appliance Act directly contravenes both the letter and the purpose of the Act.

The automatic coupler provision, section 2 of the Safety Appliance Act, is one part of a broader Federal program passed in 1893 which was designed for "the protection of employees and others by requiring the use of safe equipment." *Baltimore & Ohio R. Co.* v. *Jackson*, 353 U.S. 325, 329, 77 S. Ct. 842, 1 L. Ed. 2d 862 (1957).

To effectuate the basic remedial nature of the Safety Appliance Act and to ensure consistency with the clear language of the Act, the United States Supreme Court has held that railroads are absolutely liable for injuries occurring as a result of a violation of any part of the Safety Appliance Act. *Carter* v. *Atlanta St. Andrews Bay R. Co.*, 338 U.S. 430, 434, 70 S. Ct. 226, 94 L. Ed. 236 (1949). The railroad's liability under the automatic coupling requirements found in section 2 of the Act may thus be simply stated:

> If there was evidence that the railroad failed to furnish such "couplers coupling automatically by impact" as the statute requires . . . , nothing else needs to be considered. [Citation omitted].

Atlantic City R. Co., v. *Parker*, *supra* at 59.

Because of the absolute nature of the railroad's liability, questions concerning negligence or the defective nature of railroad appliances have no part to play in an action brought under the Federal Safety Appliance Act. As this Court stated in *Affolder*, *supra:*

> Nor do we think that any question regarding the normal efficiency of the couplers is involved in an action under the Safety Appliance Acts. As we said in O'Donnell v. Elgin, Joliet & Eastern R. Co., 1949, 338 U.S. 384, 70 S. Ct. 200, and the Carter case, supra, the duty under the Acts is not based on the negligence of the carrier but is an absolute one requiring performance "on the occasion in question."

339 U.S. at 98.

Under section 2 of the Act, the railroad is liable for any injury resulting from a failure of cars to couple automatically by impact. This liability attaches regardless of the reasons for the failure of the cars to couple so long as it can be established that the cars failed to automatically couple "on the occasion in question."

This Court has, on numerous occasions, identified the basic rationale underlying the adoption of section 2 of the Safety Appliance Act:

> The object was to protect the lives and limbs of railroad employees *by rendering it unnecessary for a man operating the couplers to go between the ends of the cars*. [Emphasis added].

Johnson v. *Southern Pacific Co.*, *supra* at 16. *See also United States* v. *Erie R. Co.*, 237 U.S. 402, 407, 35 S. Ct.

621, 59 L. Ed. 1019 (1914); *Southern R. Co.* v. *Crockett*, 234 U.S. 725, 733, 34 S. Ct. 897, 58 L. Ed. 1564 (1913).

The Safety Appliance Act was passed in 1893 in response to a marked increase in the number of deaths and serious injuries suffered by American railway workers, particularly by those workers engaged in the coupling and uncoupling of cars. To remedy this, Congress initiated the various reforms found in the Safety Appliance Act, placing significant emphasis on the elimination of any type of coupling device which required that a worker position himself between cars. It was on the basis of this desire to avoid any between-car operations by railway workers that the automatic coupler provision of the Act was proposed and ultimately passed. *See Johnson* v. *Southern Pacific Co.*, *supra* at 19-20 (discussing legislative history of automatic coupler provision).

This Court has consistently followed that legislative purpose in construing section 2 of the Act under various factual circumstances. *E.g.*, *O'Donnell*, *supra*, 338 U.S. at 389 (holding that coupler which does not remain coupled until set free by some purposeful act of control violates Act, despite lack of explicit statutory language to that effect); *Johnson* v. *Southern Pacific Co.*, *supra*, 191 U.S. at 18-19 (rejecting claim that words "without necessity of men going between the ends of cars" apply only to act of uncoupling, and holding that Act required that all couplers, even those of different types or brands, must operate uniformly so that all would couple automatically). The *Affolder* decision is, of course, in full conformity with that legislative rationale because the coupling operation at issue in *Affolder*, opening the knuckle, can be accomplished without the necessity of men going between the ends of the cars.

Petitioner's assertion that the defense recognized in the *Affolder* decision can be extended to the instant factual circumstances is totally groundless. First, Petitioner's contention that *Affolder* is controlling precedential authority is

readily dismissed because the question presented here was neither raised nor decided in *Affolder*, as explained in the discussion of the alleged conflict of decisions on this issue. Second, Petitioner's assertions that there was no defect in the coupling mechanism is irrelevant to the question of liability under section 2 of the Act. *E.g., Carter* v. *Atlanta St. Andrews Bay R. Co.*, 338 U.S. at 434.

Finally, review of the Petitioner's Argument reveals that Petitioner's claim that *Affolder* extends to the instant situation is, at its core, grounded on Petitioner's unsupported and untenable assertion that the Act was not intended to include misaligned drawbars. *See* Petition at 10-12. Not only does Petitioner fail to cite any authority for that crucial argument, but Petitioner attempts to base that argument on two equally unsupported claims—1) the Act does not deal with the horizontal movement of drawbars, and 2) the Act is not directed to static conditions, i.e., the Act has no application to coupling operations performed between the ends of cars while the cars are not in motion. Petition at 12.

Drawbars are an integral part of the coupling function. Indeed, they apparently have no other function than their role in coupling cars. *See, e.g., Donnelly*, 105 N.E.2d at 731 (coupling devices consist of a drawbar on the end of which is a knuckle); *McGowan*, 244 P.2d at 630 ("The drawbar, which is a part of the coupler, is a heavy piece of cast steel, anchored under the sill and beyond the car's end it enlarges into a head with a jaw on each side and a knuckle on the right side which swings on a pivot.").

To claim that the coupling provision of the Safety Appliance Act was not intended to include the drawbar is specious. The Act does not specify that only particular elements of coupling devices are covered by the Act. Rather, as invariably emphasized by this Court, the Act mandates the installation of such "equipment that the cars would couple with each other automatically by impact, and obviate the necessity of men going between them either for coupling or for uncoupling." *Southern R. Co.* v. *Crockett*,

supra at 733. Moreover, this Court has consistently construed that provision to prohibit any device or activity which contravened the declared purpose of Congress to promote the safety of employees and travelers upon the railroads. *Southern R. Co.* v. *Crockett, supra. See also O'Donnell, supra* at 389; *Johnson* v. *Southern Pacific Co., supra* at 16. Thus, since there is, and can be, no claim that Congress specifically excluded drawbars from its otherwise broad provision covering coupling devices, logic alone demonstrates the inaccuracy of Petitioner's claim that drawbars are not included in the Act.

Petitioner nevertheless attempts to support its position by arguing that section 2 does not mention drawbars, and that the only regulation of drawbars in the Act is the provision setting drawbar height requirements. In *Johnson* v. *Southern P. Co., supra,* this Court rejected a similar claim in which the railroad company argued that the coupling provision did not apply to locomotives because the provision refers only to "cars", whereas locomotives are specifically mentioned in other provisions of the Act, such as that requiring power brakes. This Court found that "car" was used in its generic sense in the coupling provision. The Court further found that the separate provision regarding power brakes was an additional, not a separate, regulation of locomotives because there are special reasons for locomotives, as compared with other cars, to have power brakes. Relying on the legislative intent behind the coupling provision, the Court reasoned that it was as necessary for the safety of employees in coupling and uncoupling that locomotives, as well as freight and passenger cars, be equipped with automatic couplers. 196 U.S. at 15-16.

Petitioner's claim that the Act regulates only the height and not the horizontal movement of drawbars must similarly be rejected. The coupling provision regulates the whole coupling operation, not just procedures involving a particular element such as the knuckle. Drawbar alignment, or, in other words, the horizontal movement of the drawbar, is a necessary part of the coupling operation. As

indicated in *Johnson, supra*, the separate provision regulating the height of drawbars does not indicate a legislative attempt to remove the drawbar alignment procedure from the provision regulating the coupling process. It is just as necessary for the safety of railroad employees that there be no necessity for going between the ends of the cars to align a drawbar as that they not go between the ends of cars to open a knuckle.

Moreover, this Court has already recognized the alignment of drawbars as an integral part of the coupling operation. In *Atlantic City Railroad Co. v. Parker, supra*, an engine backed into a car and failed to couple. The plaintiff saw that the drawhead was out of line, put in his arm to straighten it and was caught, losing his arm. This Court stated:

> If there was evidence that the railroad failed to furnish such "couplers coupling automatically by impact" as the statute requires [citation omitted], nothing else needs to be considered. We are of the opinion that there was enough evidence to go to the jury upon that point.
>
> * * * *
>
> If couplers failed to couple automatically upon a straight track, it at least may be said that a jury would be warranted in finding that a lateral play so great as to prevent coupling was not needed, and that, in the absence of any explanation believed by them, the failure indicated that the railroad had not fully complied with the law.

242 U.S. at 59. *See also San Antonio & Aransas Pass Ry. Co. v. Wagner, supra* (evidence of failure to couple on first attempt, together with fact that drawbar was so far out of line as to require manual adjustment before second impact, sufficient to sustain finding of violation of Safety Appliance Act).

Several lower courts, both federal and state, have had an opportunity to fully review Petitioner's claim that the

Affolder closed-coupler defense can be extended to misaligned drawbars. Without exception, those courts have unanimously rejected misalignment of drawbars as a defense to section 2 liability, holding that failure of railroad cars to couple automatically on impact due to misalignment of the drawbars is a violation of section 2 of the Safety Appliance Act. *Kansas City Southern Railway* v. *Cagle, supra; Finley* v. *Southern Pacific Co., supra; Donnelly* v. *Pennsylvania R. Co., supra; Hallada* v. *Great Northern Railway, supra; McGowan* v. *Denver & Rio Grande W. R. Co., supra. See Metcalfe* v. *Atchison, Topeka & Sante Fe Railroad, supra; Chicago St. P.M. & O. Ry.* v. *Muldowney, supra. See also Phillips* v. *Chesapeake & Ohio Railway*, 475 F.2d 22, 25 (4th Cir. 1973) (finding absolute liability under section 2 where plaintiff felt sharp pain in leg as he stepped away from railroad car after pulling lever to uncouple cars); *Buskirk* v. *Burlington Northern, Inc.*, 103 Ill. App. 3d 414, 431 N.E.2d 410, 412 (1982) (finding defendant absolutely liable under section 2 where plaintiff fell and injured his back while attempting to align drawbar after cars failed to couple), *cert. denied*, _____ U.S. _____, 74 L. Ed. 2d 173 (1982), *appeal pending*, _____ U.S. _____ (1982).

As in the instant case, those decisions are based upon this Court's construction of the Safety Appliance Act as conferring absolute liability for violation of the terms of the coupling provision, and on the material differences with the *Affolder* circumstances. The opinion of the Minnesota Supreme Court in *McGowan, supra*, exemplifies that approach.

> There is a distinction, however, between failure to couple because of misalignment and a failure because of closed knuckles. Knuckles are purposely opened and closed whereas the drawbar unintentionally becomes misaligned. Misalignment may result from wear which causes more lateral play than is necessary to permit the rounding of curves. An additional difference is that knuckles can be opened without going between the cars,

> whereas alignment is made by moving the drawbar which necessitates going between the cars. In the light of these differences, it is well to keep in mind that one of the basic purposes of the act is to require the automatic coupling and uncoupling without the necessity of men going between the cars.
>
> In view of these facts and the prior decisions which have refused to absolve railroads from liability on a defense of drawbar misalignment, it would be illogical to defeat a basic purpose of the Federal Safety Appliance Act by extending the rule of the Affolder case beyond its authoritative scope and thereby to attribute to the United States Supreme Court an intent to reverse its prior holdings by an implication to be drawn solely from the generality of its language.

69 N.W.2d at 680-681 (footnotes omitted). *See also Finley v. Southern Pacific Co., supra*, 3 Cal. Rptr. at 899-900 ("it is no defense that the failure to couple upon impact is caused by a misalignment of the drawbars") (dictum).

In summary, section 2 of the Safety Appliance Act prohibits the use of railroad cars which are not equipped with couplers coupling automatically by impact and which necessitate "men going between the ends of the cars" to accomplish coupling. The duty under that provision is absolute, with one exception (closed couplers) not at issue here. *Affolder, supra.*

In the instant case, two railroad cars failed to couple even though the knuckle on one of the cars was open (T. 524). Respondent was injured when he went between the ends of the cars in order to align the drawbars. Under the decisions of this Court and the unanimous decisions of federal and state courts addressing the question presented here, Petitioner is absolutely liable for Respondent's injuries. Therefore, the decision of the Michigan appellate courts in the instant case properly found that the trial court erred in instructing that failure of the railroad cars to

automatically couple on impact is not a violation of section 2 of the Safety Appliance Act if the failure to couple was caused by misalignment of the drawbars.

CONCLUSION

For these reasons, the Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

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